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Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

October Term, 1996

RODERICK HEITMAN, pro se,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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31 pp

QUESTIONS PRESENTED FOR REVIEW

I. Whether the Court must allow a defendant to withdraw a guilty plea where pursuant to a plea agreement a prosecutor makes but does not keep her promise to file a motion for downward departure pursuant to U.S.S.G. § 5K1.1, and that promise is material to the plea.

II. Whether the defendant is bound by a promise not to appeal his sentence pursuant to a plea agreement which the defendant claims was breached by the prosecutor.

III. Whether the prosecution can withhold its motion pursuant to § 5K1.1 when it subjectively determines defendant to be in breach of a plea agreement, despite taking the benefit of defendant's cooperation over a two year period.

LIST OF PARTIES IN THE PROCEEDINGS

Roderick Heitman
Petitioner

United States of America
Respondent

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CITATION OF OPINIONS BELOW

On July 3, 1996, a Panel of the United States Court of Appeals for the Fifth Circuit in an unreported opinion entered an order granting the Government's motion to dismiss Petitioner's appeal; a copy of the order is included in the Appendix "A". On July 31, 1996, the same panel of the United States Court of Appeals for the Fifth Circuit summarily denied the Petition for Rehearing filed by Petitioner; a copy is included in the Appendix "C".

STATEMENT OF JURISDICTION

On July 3, 1996 the United States Court of Appeals for the Fifth Circuit entered an order granting the Government's motion to dismiss Petitioner's appeal, thus affirming Petitioner's conviction and sentence entered by the United States District Court for the Southern District of Mississippi on December 7, 1995. The Petition for Rehearing filed by Petitioner was denied on July 31, 1996 Jurisdiction is conferred upon this Court pursuant to 28 U.S.C. § 1254(1). The instant Petition for Writ was pled within 90 days of the Denial of Rehearing; at which time the Court returned the 8½" x 11" filing of petitioner, allowing 60 days for refiling in proper form. (Appendix D). Petitioner, though *pro se*, is not indigent and will not waste the Court's time by filing a sham *in forma pauperis* motion. Instead, this Petition is filed in bound form.

PROVISION INVOLVED

U.S.S.G. § 5K1.1 says:

PART K – DEPARTURES

1. SUBSTANTIAL ASSISTANCE TO AUTHORITIES

§ 5K1.1 *Substantial Assistance to Authorities* (Policy Statement)

> Upon motion of the government stating that the defendant has provided substantial assistance to the investigation or prosecution of another person who has committed an offense, the court may depart from the guidelines.
>
> (a) The appropriate reduction shall be determined by the court for reasons stated that may include, but are not limited to, consideration of the following:
>
> (1) the court's evaluation of the significance and usefulness of the defendant's assistance, taking into consideration the government's evaluation of the assistance rendered;
>
> (2) the truthfulness, completeness, and reliability of any information or testimony provided by the defendant;
>
> (3) the nature and extent of the defendant's assistance;
>
> (4) any injury suffered, or any danger or risk of injury to the defendant or his family resulting from his assistance;
>
> (5) the timeliness of the defendant's assistance.

STATEMENT OF THE CASE

I. COURSE OF THE PROCEEDINGS

On July 5, 1993, Petitioner Roderick Heitman and a co-defendant were arrested. An indictment was filed charging Petitioner with 21 U.S.C. § 963, Conspiracy to Import a Controlled Substance (Count 1); and 18 U.S.C. § 1952(a)(3), Interstate Travel in Aid of an Unlawful Activity (Count 3).

On March 7, 1994, Petitioner Heitman entered a plea of guilty to Count 3 of the indictment pursuant to a Memorandum of Understanding (hereinafter referred to as plea agreement) which was entered into between Heitman and the United States and accepted by the Honorable Walter J. Gex, III of the Southern District of Mississippi; co-defendant pled guilty to Count II that same day.

On December 7, 1995, Petitioner Heitman was sentenced to the statutory maximum five (5) years imprisonment plus 3 years supervised release under Count 3 of the indictment.

Petitioner timely filed his Notice of Appeal. On or about June 6, 1996, the United States, by and through the Assistant United States Attorney filed Government's Motion to Dismiss Appeal. Petitioner Heitman timely filed his Defendant's Response to Government's Motion to Dismiss. On July 3, 1996, a Panel of the United States Court of Appeals for the Fifth Circuit entered a one sentence order granting the Government's motion to dismiss Petitioner Heitman's appeal.

Roderick Heitman timely filed his Petition for Rehearing, which was summarily denied by the same Panel of the United States Court of Appeals for the Fifth Circuit on July 31, 1996. Roderick Heitman is currently incarcerated.

II. STATEMENT OF THE FACTS

On March 7, 1994, Petitioner Roderick Heitman entered a written plea agreement with the United States Government regarding charges pending against him. Count 1 of the indictment charged Heitman with conspiracy to import cocaine, in violation of 21 U.S.C. § 963, which carries a minimum penalty of ten years and a maximum sentence of life in prison. Count 3 of the indictment charged Heitman with interstate travel in aid of an unlawful activity, in violation of 18 U.S.C. § 1952 (a) (3), which carries a maximum penalty of five years imprisonment.

According to the terms of the agreement, if Petitioner Heitman chose to plead guilty to Count 3 of the information, then the Government would dismiss all charges emanating from Count 1. Furthermore, in return for Heitman's consent to cooperate fully and disclose all information regarding past and potential violations of Federal law, the Government agreed to inform the sentencing court and ask it to consider this cooperation when passing judgment. Finally, upon the Government finding of "substantial assistance" regarding Heitman's cooperation, the Government also promised to file a motion pursuant to 18 U.S.C. § 3553(e) and 5K1.1 of the U.S.S.G. recommending a downward departure from the statutory

maximum sentence of five years for the remaining charge in Count 3 of the indictment.

Petitioner Heitman fully and completely complied with the terms of the plea agreement. First, by endorsing the agreement itself, Heitman intrinsically *agreed* to cooperate fully with federal officials. Second, according to testimony elicited at the sentencing hearing, Petitioner Heitman was directly responsible for the apprehension of at least one fugitive from justice.

Further, Petitioner Heitman supplied agents from the United States Customs Service with his full knowledge of any past or pending criminal activities. In fact, Heitman never went more than a week at a time without contacting their agents in order to update his information, right up until the date of sentencing. Lastly, defense counsel, as an officer of the court, stated at the sentencing hearing that it was Heitman who put his life on the line for these government operations, and it was Heitman who bore the expense for these undercover activities. As such, Petitioner Heitman reasonably expected the Government to keep its end of the bargain. Further, despite the absence of any substantive benefit, the prosecution had asked for and received a 5K1.1 downward departure for Petitioner's codefendant at his sentencing June 13, 1994.

Prior to Heitman's sentencing hearing, some 21 months after defendant began to cooperate, the government failed to file its § 5K1.1 motion for downward departure on the sentence for Count 3, finally notifying defendant and defense counsel the day of sentencing that it was not filed. Instead, the Assistant United States Attorney represented to the District Court that because

Heitman was challenging certain facts in his Presentence Investigation Report, he was not cooperating fully and truthfully as called for in the plea agreement. Furthermore, while the Government did notify the sentencing court of Heitman's cooperation, it failed in its obligation to ask the District Court to consider that cooperation in reaching its ultimate decision. The court considered canceling the plea agreement, but instead sentenced defendant to the maximum sentence available without regard to his substantial assistance.

REASONS FOR GRANTING THE WRIT

I. Whether the Court must allow a defendant to withdraw a guilty plea where pursuant to a plea agreement a prosecutor makes but does not keep her promise to file a motion for downward departure pursuant to U.S.S.G. § 5K1.1, and that promise is material to the plea.

Petitioner suggests that the instant case warrants review by this Court pursuant to the Writ of Certiorari because: (1) the issue put forth above has generated a split among the Circuit Courts of Appeals; (2) the issue has significant ramifications for sentencing; (3) in the instant case, the Court below has aligned itself with the minority view; and, (4) had Petitioner received the benefit of his bargained for plea, he would not be seeking withdrawal of his plea.

1. This Court has specifically set out one ground for granting a Writ of Certiorari: "A U.S. Court of Appeals has entered into a decision in conflict with the decision of another U.S. Court of Appeals on the same important

matter" [U.S. Supreme Court Rule 10(a) (1996)]. In the case *sub judice*, the dismissal of Petitioner's appeal by the Fifth Circuit is in conflict with a series of other circuits which have required Government Attorneys to abide by their bargained for promise to file motions pursuant to § 5K1.1, when the Government has benefited from the defendant's cooperation.

In *U.S. v. Dixon*, 998 F.2d 228 (4th Cir. 1993), the Court ruled that a prosecutor could not withhold the filing of a motion pursuant to 5K1.1 just because he wanted to wait until the defendant testified. The Court in *U.S. v. Burrell*, 963 F.2d 976 (7th Cir.), *cert. denied*, 121 L.Ed.2d 270 (1992), held "[I]f a prosecutor promises a defendant to make a 5K1.1 motion in exchange for a guilty plea, and then welshes on the bargain . . . a guilty plea induced by an unkept bargain is involuntary." (Id. at 985). *U.S. v. Fisch*, 863 F.2d 690, (9th Cir. 1988), the Court ruled it a breach for a prosecutor not to disclose *all* the defendant's cooperation. Also, "the government owes a duty to adhere to the bargain it has made, *U.S. v. Canada*, 960 F.2d 263, 270 (1st Cir. 1992). In *U.S. v. DeLaFuente*, 8 F.3d 1333 (9th Cir. 1993); the government acknowledged the defendant's cooperation, but refused to move (under 18 U.S.C. § 3553) for a reduction below a mandatory minimum sentence. The Court held that to be a breach which "implicates the constitutional guarantee of due process." (Id. at 1336). So also have the Eleventh Circuit (See *U.S. v. Nelson*, 837 F.2d 1519 (11th Cir. 1988); *U.S. v. Yesil*, 991 F.2d 1527 (11th Cir. 1992); and the 8th Circuit, *U.S. v. Olesen*, 920 F.2d 538 (8th Cir. 1990); recognized breaches by prosecutors. Recently, in *U.S v. Ming He*, 94

F.3d 782 (2nd Cir. 1996), the Court reaffirmed a defendant's right to appeal where, although the government made a 5K1.1 motion, it did so halfheartedly. And the Tenth Circuit said, "the government cannot prevail upon a formalistic, literal interpretation of the language in the plea agreement." *U.S. v. Belt*, 89 F.3rd 710, 713 (10th Cir. 1996). Even the Fifth Circuit itself is at odds as to a prosecutor's duties under § 5K1.1; *See U.S. v. Watson*, 988 F.2d 544 (5th Cir. 1990); *U.S. v. Hernandez*, 17 F.3rd 78 (5th Cir. 1994); *U.S. v. Laday*, 55 F.3d 24 (5th Cir. 1995); *contra see U.S. v. Aderholt*, 87 F.3d 740 (5th Cir. 1996); *U.S. v. Bond*, 87 F.3d 695 (5th Cir. 1996). As such, because of such a complete conflict between the decisions of the lower courts herein and the other circuits this Writ should be GRANTED.

2. The importance of defining a prosecutor's duties in a plea agreement has been long recognized by this Court. "When a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement of consideration, such promise must be fulfilled." *Santobello v. New York*, 404 U.S. 257, 262 (1971). "The government's practice of relying on the interviewing of informers is an old one, recognized in the common law, where it was called 'approvement'. See 4 William Blackstone, *Commentaries* 324." (*Ming He supra*, at 787). "Before the promulgation of § 5K1.1, district judges, not prosecutors, had discretion to decide whether to reduce a sentence based on a defendant's assistance." (Id. at 788). While this Court has ruled on the prosecutor having discretion (see *U.S. v. Wade*, 504 U.S. 187 [1992]), in a situation where the 5K1.1 was *not* a bargained for part of a plea agreement, it has not ruled on the exact

issues raised in this Petition. Further, the concern of this Court to clarify a prosecutor's role in the sentencing process where cooperation is solicited has been addressed in a limited fashion in *U.S v. Melendez*, 116 S.Ct. 2057 (1996), discussing motions under 5K1.1 and 18 U.S.C. § 3553. In addition, in *Koon v. U.S.*, 116 S.Ct. 2035 (1996), this Court recognized that the vast array of changes brought about by the Sentencing Reform Act of 1984, must be addressed. As such the issue raised by Petitioner is of such a moment that this Writ should be GRANTED.

3. The split in Circuits, and the Fifth's minority position is outlined above.

4. A reading of the sentencing transcript shows that the trial court even considered the repudiation of the plea agreement based on the disagreements apparent between the prosecutors and petitioner's counsel. Clearly, if during the 2 years the government solicited and used defendant's cooperation, a motion pursuant to § 5K1.1 had been made, there would be no Petition before this Court. By sentencing defendant to the maximum sentence under the statute to which he pled guilty, the prejudice to defendant by the absence of that motion is manifest. Finally, where a plea agreement shows the bargain of the government, the review of the decision not to plea a 5K1.1 "is more searching." (*Leonard, infra.*)

II. Whether the defendant is bound by a promise not to appeal his sentence pursuant to a plea agreement which the defendant claims was breached by the prosecutor.

A Criminal defendant has no Constitutional right to appeal. *Jones v. Barnes*, 463 U.S. 745 (1983), but rather a right pursuant to statute. Since the Sentencing Reform Act of 1984, "expanded appellate review" [*U.S. v. Colon*, 884 F.2d 1550, 1552 (2nd Cir.), *cert. denied*, 493 U.S. 998 (1988)] has been available pursuant to 18 U.S.C. § 3742. While the Circuits have recognized that the right to appeal a sentence may be waived as part of a plea agreement (See *U.S. v. Melancon*, 972 F.2d 566 (5th Cir. 1992), "no circuit has held that these contractual waivers are enforceable on a basis that is unlimited and unexamined." (*U.S. v. Ready*, 82 F.3d 551, 555 [2nd Cir. 1996]). In direct opposition to the finding in the instant case, the Ninth Circuit refused to uphold a waiver of appeal where the prosecution breached its plea agreement. *U.S. v. Gonzalez*, 981 F.2d 1037 (9th Cir. 1992); 16 F.3d 985 (9th Cir. 1994). See also, *U.S. v. Bogusz*, 43 F.3d 82 (3rd Cir. 1994); *U.S. v. Baramdyka*, 95 F.3d 840 (9th Cir. 1996). These courts have paralleled the finding in *Burrell, supra*, a plea (or waiver of appeal) induced by an unkept bargain is involuntary (Id. at 985). As such, due to the direct conflict between the circuits; the inherent importance of this issue; and the prejudice to this defendant; this Writ should be **GRANTED**.

III. Whether the prosecution can withhold its motion pursuant to § 5K1.1 when it subjectively determines defendant to be in breach of a plea agreement, despite taking the benefit of defendant's cooperation over a two year period.

In its statement to the Court at sentencing, the government in the instant case attempted to justify its breach

of the plea agreement by pointing out that Petitioner had filed factual objections to the P.S.I., implying that Petitioner breached first. (We remind the Court that the objections to the P.S.I. were filed only a few days before sentencing, some 18 months after the report's preparation; and 2 years after the Petitioner had begun to cooperate, at a point where no 5K1.1 had been filed in the instant case, yet it had been filed in the codefendant's case 18 months earlier.) This action is in direct conflict with the Majority of Circuit Courts of Appeals as well. In *US. v. Vogt*, 901 F.2d 100 (8th Cir. 1990), the Court held that by "its continued acceptance of the plea agreement's benefits . . . the government waived its right to complain of Vogt's breach." (Id. at 102). In *Ming He* (*supra* at 789), the Court held that even though the prosecutor found that defendant had not cooperated fully, and was not candid, it was obliged to abide by its bargain and not only make a 5K1.1 motion, but support it. In a parallel case, the Court held that if the government bargains away its rights in an agreement, it is obligated to live up to that agreement even if the defendant lies. (See *U.S. v. Fitch*, 964 F.2d 571 [6th Cir. 1992], in which an immunity agreement was upheld even though the government felt the defendant was lying.) (See also *U.S. v. Leonard*, 50 F.3d 1152 [2nd Cir. 1995]).

Finally, all Circuits seem to be requiring extreme scrutiny of the government actions once a plea is entered. See *U.S. v. Goldfaden*, 959 F.2d 1324 (5th Cir. 1992); *U.S. v. Van Horn*, 976 F.2d 1180 (8th Cir. 1992); *U.S. v. Clark*, 55 F.3d 9 (1st Cir. 1995); *U.S. v. Velez-Garerro*, 77 F.3d 11 (1st Cir. 1996); *U.S v. Taylor*, 77 F.3d 368 (11th Cir. 1996); *U.S. v. Mendoza-Alvarez*, 79 F.3d 96 (9th Cir. 1996); *U.S. v. Hawley*,

93 F.3d 682 (10th Cir. 1996). "Because plea bargaining requires defendants to waive fundamental constitutional rights, we hold prosecutors engaging in plea bargaining to the most meticulous standard of both promise and performance."

CONCLUSION

The conflicts in the Circuits set out above; the vital need for prosecutors, defense attorneys and trial courts to be guided as to post 1984 Act sentencing issues; and the rights of this individual Petitioner demand this Writ be **GRANTED**. As the Tenth Circuit said recently,

> "If at a later date the government discovers facts that cause it to believe that its prosecutorial discretion was not properly exercised, it has the ethical obligation to withdraw from the plea agreement and advise the defendant so that he or she may prepare for trial or renegotiate. It is certainly not proper for the government to wait until the sentencing hearing then breach the terms of the plea agreement, shielding its behavior by claiming its obligation to be an ethical officer of the Court."

U.S. v. Cooper, 70 F.3d 563, 567 (10th Cir. 1995). Further, the intent and spirit of *Santobello, supra*, and the concerns of this Court set out in *Blackledge v. Perry*, 417 U.S. 21 (1974); and *Burns v. United States*, 501 U.S 129 (1991), require that the sentence in this case be vacated and this cause be remanded to the District Court so that this Petitioner may "start over" (*Watson, supra*).

For the reasons stated herein, a Writ of Certiorari should be GRANTED in this case and the case should be set for briefing and argument.

In the alternative, a Writ of Certiorari should be GRANTED, the judgment of the Court of Appeals should be summarily reversed, and the case should be remanded to the Court of Appeals with instructions that it reconsider the appeal pursuant to the instructions of the Court.

THIS, the 23 day of December, 1996.

Respectfully submitted,

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-60808

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

RODERICK HEITMAN, also known as Gene Williams

Defendant-Appellant

Appeal from the United States District Court for the Southern District of Mississippi, Biloxi

---

(Filed Jul. 3, 1996)

Before JONES, EMILIO M. GARZA and DeMOSS, Circuit Judges.

BY THE COURT:

IT IS ORDERED that appellee's motion to dismiss appeal is GRANTED.

APPENDIX B

UNITED STATES DISTRICT COURT
Southern District of Mississippi

UNITED STATES OF AMERICA

V.

Roderick Heitman

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed After November 1, 1987)

Case Number: 1:93cr42GR

Donald J. Rafferty
Defendant's Attorney

(Filed Dec. 21, 1995)

THE DEFENDANT:

■ pleaded guilty to count 3 of Indictment.
❒ was found guilty on count(s) _____ after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involves the following offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 U.S.C. § 1952(a)(3)	Interstate Travel in Aid of an Unlawful Activity		3

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

❒ The defendant has been found not guilty on count(s) _____ and is discharged as to such count(s).

■ Count 1 is dismissed on the motion of the United States.

■ It is ordered that the defendant shall pay a special assessment of $50.00, for count 3 of the Indictment, which shall be due ■ immediately ❒ as follows: _____.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.: 262-72-3751
Defendant's Date of Birth: 1/26/41
Defendant's Mailing Address:
7101 Pinnacle Drive, Apt. A-21
Ft. Myers, FL 33907
Defendant's Residence Address:
Same

December 7, 1995
Date of Imposition of Sentence
/s/ Walter Gex
Signature of Judicial Officer
Walter J. Gex, III,
U.S. District Court Judge
Name & Title of Judicial Officer
12/13/95
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 60 months. The cost of incarceration is waived.

☐ The court makes the following recommendations to the Bureau of Prisons:

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district.

- ☐ before ___ a.m.
- ☐ before ___ p.m. on ___.

☐ as notified by the United States Marshal.

■ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons,

- ■ before 12:00 p.m. on February 5, 1996.
- ☐ as notified by the United States Marshal.
- ☐ as notified by the probation office.

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on ___ to ___ at ___, with a certified copy of this judgment.

_____

United States Marshal

By _____

Deputy Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years.

While on supervised release, the defendant shall not commit another federal, state, or local crime and shall not illegally possess a controlled substance. The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). If this judgment imposes a restitution obligation, it shall be a condition of supervised release that the defendant pay any such restitution that remains unpaid at the commencement of the term of supervised release. The defendant shall comply with the following additional conditions:

■ The defendant shall report in person the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

■ The defendant shall pay any fines that remain unpaid at the commencement of the term of supervised release.

■ The defendant shall not possess a firearm or destructive device.

The defendant shall pay a fine in the amount of $25,000. The fine is payable during the period of incarceration, with any remaining balance payable in 34 equal monthly installments beginning 30 days after release. No interest is to be charged.

The defendant shall submit to a search of his person, vehicle and/or residence upon demand of his supervising U.S. Probation Officer.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

1) The defendant shall not leave the judicial district without permission of the court or probation officer;

2) The defendant shall report to the probation officer as directed by the Court or probation officer, and shall submit a truthful and complete written report within the first five days of each month;

3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) The defendant shall support his or her dependents and meet other family responsibilities;

5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training or other acceptable reasons;

6) The defendant shall notify the probation officer within seventy-two hours of any change of residence or employment;

7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;

8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associated

with any person convicted of a felony unless granted permission to do so by the probation officer;

10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;

11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the Court;

13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

FINE

The defendant shall pay a fine of $25,000. The fine includes any cost of incarceration and/or supervision.

☐ This amount is the total of the fines imposed on individual counts, as follows:

■ The court has determined that the defendant does not have the ability to pay interest. It is ordered that:

■ The interest requirement is waived.
☐ The interest requirement is modified as follows:

This fine plus any interest required shall be paid:
☐ in full immediately.

- ☐ in full not later than _____.
- ☐ in equal monthly installments over a period of _____ months. The first payment is due on the date of this judgment. Subsequent payments are due monthly thereafter.
- ■ in installments according to the following schedule of payments:

Fine is payable during the period of incarceration with any remaining balance payable in 34 equal monthly installments beginning 30 days after release. No interest is to be charged.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-60808

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

RODERICK HEITMAN, also known as Gene Williams

Defendant-Appellant

Appeal from the United States District Court for the Southern District of Mississippi, Biloxi

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(Filed Jul. 31, 1996)

Before JONES, EMILIO M. GARZA and DeMOSS, Circuit Judges.

BY THE COURT:

IT IS ORDERED that appellant's petition for rehearing, treated as a motion for reconsideration of this court's order issued on July 3, 1996, is denied.

/s/ EJ
HRD
EMG

APPENDIX D

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

WILLIAM K. SUTER
CLERK OF THE COURT

AREA CODE 202
479-3011

October 31, 1996

Roderick Heitman
Reg. No. 03390-043
P.O. Box 2650
2650 U.S. HWY 301 S.
Jessup, GA 31599

RE: Roderick Heitman v. United States

Dear Mr. Heitman:

The above-entitled petition for writ of certiorari was postmarked October 29, 1996 and received October 31, 1996. The papers are returned for the following reason(s):

No motion for leave to proceed in forma pauperis, signed by the petitioner or by counsel, is attached. Rules 33.2 and 39. The motion must be signed.

No notarized affidavit or declaration of indigency is attached. Rule 39. You may use the enclosed form.

Please correct and resubmit as soon as possible. Unless the petition is received by this Office in corrected form within 60 days of the date of this letter, the petition will not be filed. Rule 14.5.

A copy of the corrected petition must be served on opposing counsel.

Enclosed is your $300.00 check. No filing fees are required when you are proceeding in forma pauperis.

Sincerely,
William K. Suter, Clerk
By: /s/ Jeffrey Atkins
Jeffrey Atkins
(202) 479-3263

Enclosures

cc: Walter Dellinger